

A **MOHD AFFANDI YUSOFF v. HONG LEONG BANK BHD
& ANOR**

COURT OF APPEAL, PUTRAJAYA
DAVID WONG DAK WAH JCA
ABANG ISKANDAR JCA

B HASNAH MOHAMMED HASHIM JCA
[CIVIL APPEAL NO: B-02(NCVC)(W)-527-03-2017]
27 FEBRUARY 2019

C **LAND LAW:** Title – Indefeasibility of title – Land auctioned and sold to successful bidder/purchaser – Term of condition of sale stipulated balance purchase price must be paid within 120 days of sale – Purchaser paid balance purchase price within stipulated time – High Court acknowledged receipt but issued receipts dated after 120 days limit – Whether purchaser breached term of condition of sale – Whether purchaser made full payment within specified time – Whether purchaser beneficial owner of land – Whether sale of land completed

D **LAND LAW:** Title – Transfer – Allegation of fraudulent transfer – Land auctioned and sold to successful bidder/purchaser – Discovery of amendment and/or alteration of date in instrument to transfer land – Whether affected obligation and/or liability of purchaser in proclamation for sale – Whether title transferred using fraudulent instrument – Whether presentation of instrument of transfer valid – Whether purchaser title defeasible – National Land Code, s. 340(2)(b)

E The appellant ('plaintiff') purchased a piece of land and the purchase was partly financed by the first respondent ('first defendant') for a sum of RM457,000 by way of a loan agreement. The land was charged as security for the loan. When the plaintiff defaulted in the repayment of the loan, the first defendant commenced a civil suit against the latter for the recovery of the owing sum. The first defendant obtained a judgment in default against the plaintiff and foreclosure proceedings were commenced. After an order for sale was obtained, the land was auctioned and following that, sold to the successful bidder, the second respondent ('second defendant'). Condition 8 of the conditions of sale stipulated that the balance purchase price must be paid within 120 days of the sale *ie* on or before 23 October 2006. The second defendant paid the balance of 10%, to the Shah Alam High Court ('SAHC'), and the SAHC acknowledged receipt of the payment, through two bank drafts, on 20 October 2006 and issued receipts dated 26 June 2006 and 30 October 2006. The Deputy Registrar of the High Court endorsed and issued a certificate of sale ('Form 16F'). Subsequently, the second defendant presented Form 16F to the land office for registration and the transfer of the land, from the plaintiff to the second defendant. The plaintiff commenced a suit against the defendants, at the High Court, on the grounds that (i) there was a breach of the conditions of sale as the second defendant paid the balance sum on 30 October 2006, instead of 23 October 2006, as evinced by

the SAHC's receipt; and (ii) the land was illegally transferred to the second defendant as Form 16F was tampered as (a) the original date of 9 April 2007 was altered to 15 November 2010; and (b) the date of acknowledgment of receipt by the court was crossed out. Dismissing the plaintiff's suit, the Judicial Commissioner ('JC') held that (i) the payment of the balance purchase price was completed when the second defendant presented the banker's cheques on 20 October 2006 and not on the date of the issuance of the receipt by the court; (ii) the allegation of fraud or forgery had nothing to do with the interest of the plaintiff because, when Form 16F was issued, the second defendant was the beneficial owner of the land; (iii) the amendment and/or alteration of the date in Form 16F did not affect the obligation and/or liability of the second defendant in the proclamation for sale. Form 16F was merely an instrument of dealing to transfer the land from the plaintiff to the second defendant; and (iv) the presentation of the amended Form 16F was valid. Hence, the present appeal. The issues that arose for consideration were (i) whether there was a breach of condition 8 of the conditions of sale; and (ii) the validity of Form 16F.

Held (allowing appeal in part)

Per Hasnah Mohammed Hashim JCA delivering the judgment of the court:

- (1) The second defendant was the successful bidder at the public auction. The second defendant made a full payment within the specified time and was the beneficial owner of the land. There was no breach of condition 8 by the second defendant. The sale of the land had been completed. There was no reason to disturb the finding of the JC that the second defendant paid the balance purchase price within 120 days. (para 25)
- (2) Form 16F was indeed tampered and the registration of the land in the name of the second defendant was bad in law as Form 16F, with the unexplained alterations, was presented to secure registration. The defendants themselves did not dispute that Form 16F was altered. There was merit in the plaintiff's complaint with regard to the JC's finding on the issue of the validity of Form 16F. Therefore, the transfer of the said land to the second defendant, with a forged and/or void instrument of dealing, was defeasible under s. 340(2)(b) of the National Land Code. However, since the second defendant was the successful bidder at the public auction, and had made full payment within the specified time, the plaintiff's right in the land had been extinguished. The plaintiff was, in fact and in law, a bare trustee. The order of the JC was varied accordingly to reflect that the transfer of the land to the second defendant was set aside. (paras 29, 31 & 32)

A *Bahasa Malaysia Headnotes*

Perayu ('plaintif') telah membeli sebidang tanah dan belian tersebut separanya dibiayai oleh responden pertama ('defendan pertama') berjumlah RM457,000 melalui satu perjanjian pinjaman. Tanah tersebut dipajak sebagai cagaran untuk pinjaman. Apabila plaintif ingkar dalam bayaran semula pinjaman, defendan pertama memulakan satu guaman sivil terhadapnya untuk pengembalian semula jumlah yang terhutang. Defendan pertama memperoleh penghakiman ingkar terhadap plaintif dan prosiding penyitaan dimulakan. Selepas perintah jualan diperoleh, tanah tersebut dilelong dan, berikutan itu, dijual kepada pembida yang berjaya iaitu responden kedua ('defendan kedua'). Syarat 8 syarat-syarat jualan menyatakan baki harga belian mesti dibayar dalam tempoh 120 hari jualan, iaitu pada atau sebelum 23 Oktober 2006. Defendan kedua membayar baki 10% kepada Mahkamah Tinggi Shah Alam ('MTSA') dan MTSA memperakui penerimaan bayaran, melalui dua draf bank, pada 20 Oktober 2006 dan mengeluarkan resit-resit bertarikh 26 Jun 2006 dan 30 Oktober 2006. Timbalan Pendaftar Mahkamah Tinggi mengendorskan dan mengeluarkan perakuan jualan ('Borang 16F'). Defendan kedua kemudian mengemukakan Borang 16F di pejabat tanah untuk pendaftaran dan pindah milik tanah, daripada plaintif kepada defendan kedua. Plaintif memulakan guaman terhadap defendan-defendan, di Mahkamah Tinggi, atas alasan (i) berlaku pelanggaran syarat-syarat jualan kerana defendan kedua membayar jumlah baki selepas 30 Oktober 2006, dan bukan 23 Oktober 2006, terbukti melalui resit-resit MTSA; dan (ii) tanah tersebut dipindah milik secara tidak sah kepada defendan kedua kerana Borang 16F diubah kerana (a) tarikh asal 9 April 2007 diubah menjadi 15 November 2010; dan (ii) tarikh perakuan penerimaan mahkamah dipotong. Menolak guaman plaintif, Pesuruhjaya Kehakiman ('PK') memutuskan (i) bayaran baki harga belian tersempurna apabila defendan kedua mengemukakan cek-cek jurubank pada 20 Oktober 2006 dan bukan pada tarikh pengeluaran resit oleh mahkamah; (ii) dakwaan penipuan atau pemalsuan tiada kaitan dengan kepentingan plaintif kerana, semasa Borang 16F dikeluarkan, defendan kedua ialah pemilik benefisial tanah tersebut; (iii) pindaan dan/atau ubahan tarikh dalam Borang 16F tidak menjejaskan kewajipan dan/atau liabiliti defendan kedua dalam perisytiharan jualan. Borang 16F sekadar instrumen urusan pindah milik tanah daripada plaintif kepada defendan kedua; dan (iv) pengemukakan Borang 16F, yang dipinda, adalah sah. Maka timbul rayuan ini. Isu-isu berbangkit untuk pertimbangan adalah (i) sama ada berlaku pelanggaran syarat 8 syarat-syarat jualan; dan (ii) kesahan Borang 16F.

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Diputuskan (membenarkan sebahagian rayuan)

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Oleh Hasnah Mohammed Hashim HMR menyampaikan penghakiman mahkamah:

- (1) Defendan kedua ialah pembida yang berjaya dalam lelongan awam. Defendan kedua membuat bayaran penuh dalam masa yang ditetapkan dan ialah pemilik benefisial tanah tersebut. Tiada pelanggaran syarat 8 oleh defendan kedua. Jualan tanah tersebut telah disempurnakan. Tiada alasan mengganggu dapatan PK bahawa defendan kedua telah membayar baki harga belian dalam tempoh 120 hari. B
- (2) Tidak boleh diabaikan bahawa Borang 16F sememangnya diubah dan pendaftaran tanah atas nama defendan kedua tidak sah kerana Borang 16F, dengan kewujudan pindaan-pindaan yang tidak dijelaskan, dikemukakan untuk pendaftaran. Defendan-defendan sendiri tidak mempertikaikan Borang 16F dipinda. Terdapat merit dalam aduan plaintif berkaitan dapatan PK tentang isu kesahan Borang 16F. Oleh itu, pindah milik tanah kepada defendan kedua, dengan instrumen urusan yang dipalsukan dan/atau terbatal, boleh disangkal bawah s. 340(2)(b) Kanun Tanah Negara. Namun begitu, oleh kerana defendan kedua pembida yang berjaya dalam lelongan awam, dan telah membuat bayaran penuh dalam tempoh yang ditetapkan, hak plaintif terhadap tanah tersebut dipadamkan. Berdasarkan fakta dan bawah undang-undang, plaintif seorang pemegang amanah. Perintah PK diubah sewajarnya agar mencerminkan bahawa pindah milik tanah kepada defendan kedua diketepikan. C
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Case(s) referred to:

Kamarulzaman Omar & Ors v. Yakub Husin & Ors [2014] 1 CLJ 987 FC (refd)

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Legislation referred to:

National Land Code, s. 340(2)(b)

For the appellant - S Shanmugan & R Rajasegran; M/s Sutha & Co

For the 1st respondent - Daphne Khoo Su Mei & Tan Mei Fang; M/s Rahmat Lim & Partners

G

For the 2nd respondent - Yap Siew Yee & Tee Chin Hian; M/s Yap Siew Yee & Co

[Editor's note: For the High Court judgment, please see Mohd Affandi Yusoff v. Hong Leong Bank Bhd & Anor [2017] 1 LNS 1238 (overruled in part).]

Reported by Najib Tamby

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JUDGMENT**Hasnah Mohammed Hashim JCA:**

[1] The appeal before us was against the decision of the learned Judicial Commissioner in the Shah Alam High Court dismissing the appellant's claims against the first and second respondents. We had, after perusing the records of appeal and after considering the written and oral submissions of

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A learned counsel for the appellant and the respondents, unanimously allowed the appeal in part with no order as to costs. The order of the High Court was accordingly varied. We further ordered that the deposit be refunded. Our reasons appear below.

B [2] For the purpose of this judgment, the parties will be referred to as they were referred to in the High Court.

Material Facts

C [3] We summarised the material facts as follows. The plaintiff purchased a piece of industrial land held under title Geran no. 40090, Lot 4314, Mukim Serendah Daerah Hulu Selangor ('the land'). The purchase of the land was partly financed by the first defendant for a sum of RM457,500 *vide* a loan agreement dated 4 September 1997 ('the loan'). The land was charged as security for the loan.

D [4] The plaintiff defaulted in the repayment of the loan. The first defendant commenced a civil suit against the plaintiff for recovery of the sum owing (Shah Alam Civil Suit No MT 4-22-929-1998). Judgment in default was obtained on 5 November 1998 for the sum of RM479,010.98 together with interest.

E [5] Foreclosure proceedings was then commenced and an order for sale dated 22 February 1999 was obtained. By a proclamation of sale, the land was to be sold by public auction at a reserve price of RM445,500 subject to the conditions of sale. An auction date was fixed on 26 June 2006. The land was sold on 26 June 2006 to the second defendant who was the highest bidder.

F [6] The terms of the conditions of sale stipulated that the balance purchase price must be paid within 120 days of the sale, ie, on or before 23 October 2006.

G [7] The second defendant obtained a loan for a sum of RM330,000 from Hong Leong Islamic Bank Berhad. The balance 10% of purchase price, a sum of RM404,550 was paid by the second defendant through its solicitors *vide* a letter dated 19 October 2006 to the Shah Alam High Court and acknowledged receipt by the court on 20 October 2018:

H (i) RM330,000 *vide* a Hong Leong Bank Berhad Bank Draft No. 008425 dated 18 October 2006; and

(ii) RM74,550 *vide* Bumiputra-Commerce Bank Berhad Bank Draft No. 411094 dated 9 October 2006.

I [8] The Shah Alam High Court issued receipts dated 26 June 2006 and 30 October 2006 for the following payments:

(i) The deposit sum of RM44,950; and

(ii) The balance of RM404,450.

[9] The first defendant had also commenced bankruptcy proceedings against the plaintiff. An adjudicating order was granted on 25 March 2007 and the plaintiff was declared a bankrupt. The plaintiff was discharged on 7 May 2015. A

[10] Upon the second defendant complying with the conditions of sale, the Deputy Registrar of the High Court endorsed and issued a certificate of sale (Form 16F) on 9 April 2007. A penyata balif dated 16 April 2007 was then issued by the court. A sum of RM418,268.20 was paid to the first defendant's solicitors. Subsequently, the second defendant's solicitors presented the Form 16F dated 15 November 2010 to the land office on 27 January 2011 for registration and transfer of the land from the plaintiff to the second defendant. B
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[11] The plaintiff filed this suit when he discovered that there was a breach of the conditions of sale and the illegal transfer of the land to the second defendant. The second defendant paid the balance sum on 30 October 2006 instead of 23 October 2006 and was therefore in breach of the terms of conditions of sale. D

[12] The plaintiff filed a suit against both the defendants and sought the following reliefs:

- (a) An order to rescind the memorandum of sale dated 26 June 2006 and setting aside the proclamation of sale and the public auction dated 26 June 2006. E
- (b) To set aside the order for sale dated 22 February 1999 and 30 March 2006.
- (c) Forfeiture of the deposit sum of RM44,950 and to be paid into account of the plaintiff less the charges and refund the balance purchase price of RM416,268.20 to the second defendant. F
- (d) To annul the certificate of sale (Form 16F) dated 15 November 2010.
- (e) Cancellation of the registration of title in the name of the second defendant. G
- (f) A declaration that the plaintiff is the registered and beneficial owner of the land.
- (g) Forfeiture of the deposit to be paid into the account of the plaintiff. H

[13] After a full trial, the learned Judicial Commissioner concluded that based on the evidence before her, the plaintiff failed to prove his case on a balance of probabilities and dismissed the plaintiff's claim.

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A Findings Of The High Court

[14] The learned Judicial Commissioner dismissed the plaintiff's application on the following grounds:

- B** (a) The payment of the balance purchase price was completed when the second defendant presented the banker's cheques on 20 October 2006 and not the date of the issuance of the receipt by the court.
- C** (b) The allegation of fraud or forgery had nothing to do with the interest of the plaintiff because at the material time when Form 16F was issued, the second defendant is the beneficial owner of the land.
- C** (c) The amendment and/or alteration of the date in the Form 16F did not affect the obligation and/or liability of the second defendant in the proclamation for sale. Form 16F is merely an instrument of dealing to transfer the said land from the plaintiff to the second defendant.
- D** (d) The presentation of the amended Form 16F was valid.

Grounds Of Appeal

[15] In the memorandum of appeal, the plaintiff raised, *inter alia*, the following two main grounds in impugning the learned Judicial Commissioner's decision:

- E** (i) Whether there was a breach of condition 8 of the memorandum of sale; and
- (ii) The validity of the certificate of sale (Form 16F).

F Submission Of Parties

Whether There Was A Breach Of Condition 8 Of The Memorandum Of Sale

- G** [16] Learned counsel for the plaintiff submitted that the court receipt dated 30 October 2006 is proof that the second defendant had paid the balance sum of RM404,550 on 30 October 2006. The penyata baliff dated 16 April 2007 stated that the payment of the balance purchase price was paid on 30 October 2006. The payment was made seven days after the expiry of the 120 days as stipulated in cl. 8 of the memorandum of sale rendering the said sale void.

- H** [17] In reply, learned counsel for the first defendant argued that the payment was made on 20 October 2006 and that there was a delay in the issuance of the receipt by the Shah Alam High Court. Based on the oral and documentary evidence, there was no delay in the payment of the balance purchase price. Therefore, the second defendant had complied with condition 8 and paid within the required 120 days.

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[18] Learned counsel for the second defendant had also submitted that payment was made within 120 days in compliance with the terms of the condition of sale. This was confirmed by PW1, the Deputy Registrar at the time of the transaction.

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The Validity Of The Certificate Of Sale (Form 16F)

[19] It is the plaintiff's case that Form 16F that was presented was tampered as follows:

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(a) the original date of 9 April 2007 was altered to 15 November 2010; and

(b) the date of acknowledgement of receipt by the court was crossed out.

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[20] Learned counsel for the plaintiff argued that the presentation of the altered Form 16F was invalid as it was amended without any authorisation. The second defendant's solicitors had committed forgery by changing the date and concealing the original date on the said Form 16F without authorisation with the intention to evade stamp duty penalty. The second defendant had used a forged instrument of dealing for presentation to the land office thus, the second defendant had procured the registration of title by presenting a forged instrument of dealing. The registration of title in the name of the second defendant is therefore defeasible under s. 340(2)(b) National Land Code (See: *Kamarulzaman Omar & Ors v. Yakub Husin & Ors* [2014] 1 CLJ 987; [2014] 2 MLJ 768).

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[21] In reply, learned counsel for the first defendant submitted that the plaintiff never pleaded the intent of the forged Form 16F was to evade stamp duty. The plaintiff's witness had no personal knowledge of the Form 16F and even if there was fraud, the plaintiff is not affected by the alleged fraud. Furthermore, the plaintiff failed to adduce evidence that the second defendant had fraudulently instructed its previous solicitors to tamper with the Form 16F.

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[22] It was further submitted by learned counsel for the second defendant that the existence of fraud would not affect the plaintiff as at the material time of the issuance of Form 16F, the second defendant was the beneficial owner having paid the balance of the purchase price within the specified time. The alteration of the date on Form 16F is immaterial and does not affect the validity of Form 16F. The plaintiff no longer had any right or interest over the land. The second defendant would be seriously prejudiced as the transfer had been completed in January 2011 and has constructed a factory/warehouse on the land. Furthermore, the land has been charged to Public Bank Berhad.

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[23] Learned counsel for the second defendant submitted that the plaintiff had benefited from the forced sale as the proceeds was credited into the plaintiff's outstanding account to offset his debt with the first defendant.

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A **Decision**

[24] As alluded to earlier, the issues before this court were whether there was a breach of condition 8 of the memorandum of sale and the validity of the certificate of sale (Form 16F).

B [25] The second defendant was the successful bidder at the public auction. On the facts and evidence, the second defendant had made full payment within the specified time and is the beneficial owner of the land. We agree with the learned Judicial Commissioner that there was no breach of the condition 8 by the second defendant and that the sale of the land had been completed. There is no reason, therefore, to disturb the finding of the learned
C Judicial Commissioner that the second defendant had paid the balance purchase price within 120 days.

[26] In addressing the issue with regards to the validity of Form 16F, the learned Judicial Commissioner had found, based on the evidence before her,
D that the forged Form 16F does not render it as a void instrument and affect the second defendant's interest as the beneficial owner of the land:

[38] The allegation of fraud or forgery has nothing to do with the interest of the Plaintiff because at the material time of the issuance of Form 16F, the beneficial owner of the said property was already the 2nd Defendant. Even if there is fraud or forgery, it would have no impact on the Plaintiff as he was no longer the beneficial owner of the said property. In addition, the Plaintiff also had failed to prove who did make the amendment or forged P11. There were no evidence (*sic*) adduced by the Plaintiff to support his allegation that it was the 2nd Defendant's solicitor who did alter the date on P11. At the same time from D12, PW1 was unable to verify as who had made the said amendment since on that material date he was no longer the Deputy Registrar in the High Court Shah Alam. Taking into account of these evidence, I am of the view that the Court should not be left to guess who actually had made the alteration. It could also be done by any court officer who had the authority or approval to do so. In the absence of other evidence, I find that the Form 16F is a valid instrument properly issued in accordance with Section 259(3) NLC 1965.
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[39] Furthermore, I am also of the view that the amendment and/or alteration on the date of the Form 16F Exhibit P11 does not in any event change the terms and conditions or affect the obligation and/or liability of the 2nd Defendant in the Proclamation of Sale and/or Contract of Sale nor in the Form 16F itself. The Form 16F is merely an instrument of dealing to transfer the said Property from the Plaintiff to the 2nd Defendant after the 2nd Defendant had fulfilled its obligation under the said Proclamation of Sale and/or Contract of Sale under Section 267 NLC 1965. Even if there is an alteration as to the date on the Form 16F, it does not render the Form 16F as a void and insufficient instrument. I am satisfied that the alteration as to the date will not invalidate the Form 16F. Above all it does not change the fact that the 2nd Defendant is the *bona fide* purchaser for valuable consideration, who had fulfilled all its obligations under the said Proclamation of Sale and/or Contract of Sale within the stipulated period.
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[27] Learned counsel for the plaintiff submitted that the second defendant's title is defeasible because the registration was obtained by means of an insufficient or void instrument. There were alterations made to the endorsed the Form 16F:

**KANUN TANAH NEGARA
BORANG 16F
PERINTAH JUALAN OLEH MAHKAMAH**

(Stem hendaklah diletakkan atau pembayaran Cukai Diperakui-dalam ruang ini)
UNTUK KEGUNAAN PEJABAT PENDAFTARAN

Ingatan pendaftaran dibuat dalam Suratan/Hakmilik dalam daftar yang dijudualkan di bawah ini mulai dari pukul 10.13 pada 21 haribulan Jan 2011

Fail mengenai (m/f)
Jilid
Folio
Perserahan No.

Pendaftar/Pentadbir Negeri/Daerah K.L.

SAYA, ADLI BIN ABD. GHALIB K/P No:610628-08-5491
Timbalan Pendaftar, Mahkamah Tinggi Malaya di Shah Alam pada menjalankan kuasa-kuasa yang diberi oleh Seksyen 259, Kanun Tanah Negara, dengan ini memperakui bahawa tanah yang tersebut dalam jadual dibawah ini telah dijual dengan harga sebanyak Ringgit Malaysia: Empat Ratus Empat Puluh Sembilan Ribu Dan Lima Ratus (RM449,500-00) sahaja (penerimaan yang mana dengan ini diakui) kepada LEFORM SDN. BHD. (330776-K), sebuah syarikat yang ditubuhkan di Malaysia di bawah Akta Syarikat 1965 dan mempunyai pejabat perniagaan di Lot 7111, Mukim Kapar, 5 1/2 Miles, Jalan Kapar, 42100 Klang, Selangor Darul Ehsan menurut Perintah Mahkamah di bawah Seksyen 256 dalam Kanun itu, yang telah atas permohonan gadaian di bawah Gadaian Berdaftar No. 46916/97 Jilid 87 Folio 161

❖ Suratan Hakmilik yang dikeluarkan bagi tanah itu:-
❖ (a) adalah dikembarkan bersama ini ;
❖ (b) tidak pernah diserahkan kepada Mahkamah pada bila-bila masa pun, dan tidaklah dikembarkan.

Bertarikh pada 15 November 2010 haribulan 15 2010

SALINAN YANG DIPERAKUI SAH

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17/1/16

PEGAWAI MAHKAMAH

E. RAJA SYAMUDIN C. RAJA ABDUL WAZIR

- A [28] PW1 could not verify who had made the alterations since on the stipulated date, he was no longer the Deputy Registrar in the Shah Alam High Court. The letter from the Registrar of the High Court dated 5 February 2016 (referred to by the Judicial Commissioner in para. [37] of her grounds of judgment) confirmed that PW1 was the Deputy Registrar from June 2006 to
- B October 2007 and that the Form 16F was altered. However, he could not verify nor explain who had altered the Form 16F:

C  **PENDAFATAR
MAHKAMAH TINGGI MALAYA
ARAS 2, ISTANA KEHAKIMAN
PRESINT 3
62506 PUTRAJAYA**

Telefon : 03-8888
Faks : 03-8888
Laman Web : <http://www.kedahakimn.gov.my>

D Ref. Tuan SC/MISC/0497/15
Ref. (16F) PMT/UU/7.JLD.6
Tarikh 5 Februari 2016

E Tetuan Sutha & Co
Peguambela & Peguamcara
24B, Jalan Dato Hamzah
41000 Klang
SELANGOR DARUL EHSAN

F Tuan,
MAHKAMAH TINGGI SHAH ALAM
SAMAN PEMULA NO MT1-24-660-1998
PERMOHONAN UNTUK PELAKSANAAN NO: 38-353-2005
HONG LEONG FINANCE BERHAD
MOHD AFFANDI BIN YUSOF

PLAINTIF
DEFENDAN

Dengan hormatnya saya diarah untuk merujuk kepada surat tuan bertarikh 1 Disember 2015 dan 1 Februari 2016 berkenaan perkara di atas.

G 2. Dimaklumkan bahawa pejabat ini telah menjalankan siasatan dan juga menyemak rekod-rekod prosiding kes berkenaan. Untuk makluman tuan, semakan pejabat ini mendapati tandatangan pada Kontrak Jualan, Penyata Bailif dan Borang 16F disahkan oleh Tuan Adli bin Abd. Ghalib sebagai tandatangan beliau. Tuan Adli bin Abd. Ghalib juga telah mengesahkan bahawa beliau telah berkhidmat di Mahkamah Tinggi Shah Alam sebagai Timbalan Pendaftar sejak bulan Jun 2006 hingga bulan Oktober 2007.

H 3. Walau bagaimanapun, setelah meneliti dokumen-dokumen yang dikemukakan oleh tuan, pejabat ini mendapati terdapat pindaan pada Borang 16F iaitu di bahagian 'tarikh' dan 'tarikh terima' Mahkamah. Setelah dirujuk kepada Tuan Adli bin Abd. Ghalib, beliau mengesahkan bahawa terdapat pindaan pada tarikh tersebut tetapi tidak dapat dipastikan siapakah yang membuat pindaan-pindaan tersebut.

I 4. Pejabat ini berharap penjelasan di atas dapat membantu tuan untuk mengambil langkah-langkah yang sewajarnya bagi perkara tersebut di atas.

[29] We accept that there was no evidence adduced by the plaintiff on who had altered the date on the Form 16F. The first and second defendants themselves did not dispute that Form 16F was altered. In this regard, we cannot ignore that the said Form 16F was indeed tampered and the registration of the land in the name of the second defendant is bad in law as the Form 16F with the unexplained alterations was presented to secure registration.

[30] In the Federal Court case of *Kamarulzaman Omar & Ors v. Yakub Husin & Ors* [2014] 1 CLJ 987 His Lordship Jeffrey Tan FCJ gave the following advice:

[41] Before we adjourn, we would summarise the foregoing and pass on the following, as a guide to trial courts. Whenever a registered title or interest is sought to be set aside under s. 340, first ascertain whether the title or interest under challenge is registered in the name of an immediate purchaser or a subsequent purchaser. If the title or interest is registered in the name of an immediate purchaser, the *bona fides* of the immediate purchaser will not offer a shield of indefeasibility. The title or interest of an immediate purchaser is still liable to be set aside if any of the vitiating elements as set out in s. 340(2) has been made out.

[31] It was therefore clear to our mind that there is merit in the plaintiff's complaint with regard to the learned trial judge's finding on the issue of the validity of Form 16. Thus, in our judgment, the transfer of the said land to the second defendant with a forged and/or void instrument of dealing is defeasible under s. 340(2)(b) of the NLC. However, it must be emphasised that since the second defendant was the successful bidder at the public auction and had made full payment within the specified time, the plaintiff's right in the land had been extinguished. The plaintiff is in fact and in law, a bare trustee.

Conclusion

[32] After perusing the records of appeal and after considering the submissions from all parties, we had allowed the appeal in part. The order of the learned Judicial Commissioner is hereby varied accordingly to reflect the decision of this court, in particular, that the transfer of the land to the second defendant is set aside. We ordered no costs and that the deposit be refunded to the appellant.

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